

**FILED**

**MAR 29 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

CHRISTOPHER SHAWN JOHNSON,

Plaintiff - Appellant,

v.

JAMES SPALDING, Superintendent  
MCC; et al.,

Defendants - Appellees.

No. 05-35824

D.C. No. CV-05-00821-JLR

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
James L. Robart, District Judge, Presiding

Submitted March 8, 2006<sup>\*\*</sup>

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Christopher Shawn Johnson, a Washington state prisoner, appeals pro se from the district court's judgment denying his request to proceed in forma pauperis ("IFP") in his 42 U.S.C. § 1983 action on the ground that he had accrued

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

“three strikes” under 28 U.S.C. § 1915(g). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court’s interpretation of section 1915(g) and related legal conclusions, *Andrews v. King*, 398 F.3d 1113, 1118 (9th Cir. 2005), and we affirm.

The district court properly denied Johnson leave to proceed IFP because at the time he sought IFP status, he had filed three prior actions that qualified as “strikes,” and he failed to show he was in imminent danger of serious physical harm. *See* 28 U.S.C. § 1915(g); *Tierney v. Kupers*, 128 F.3d 1310, 1311-12 (9th Cir. 1997).

We construe the district court’s termination of the action as a dismissal without prejudice to Johnson’s filing a new action upon payment of the filing fees.

Johnson’s remaining contentions lack merit.

**AFFIRMED.**